

# **TITLE XII — ELECTRICITY**

## **Subtitle A — Amendments to the Federal Power Act**

### **SEC. 1201. DEFINITIONS**

(a) DEFINITION OF ELECTRIC UTILITY.—Section 3(23) of the Federal Power Act (16 U.S.C. 796(22)) is amended to read as follows:

“(22) ‘electric utility’ means any person or Federal or State agency (including any municipality) that sells electric energy; such term includes the Tennessee Valley Authority and each Federal power marketing agency.”.

(b) DEFINITION OF TRANSMITTING UTILITY.—Section 3(23) of the Federal Power Act (16 U.S.C. 796(23)) is amended to read as follows:

“(23) TRANSMITTING UTILITY.—The term ‘transmitting utility’ means an entity (including any entity described in section 201(f)) that owns or operates facilities used for the transmission of electric energy—

“(A) in interstate commerce; or

“(B) for the sale of electric energy at wholesale.”.

(c) DEFINITION OF TRANSMISSION SERVICES.—Section 3(24) of the Federal Power Act (16 U.S.C. 796(24)) is amended by adding at the end the following:

“(24) ‘TRANSMISSION SERVICES’ means the transmission of electric energy sold or to be sold.”.

(d) DEFINITION OF TRANSMISSION ORGANIZATION.—Section 3 of the Federal Power Act (16 U.S.C. 796(26)) is added to read as follows:

“(26) TRANSMISSION ORGANIZATION.—The term ‘Transmission Organization’ means a regional transmission organization, independent system operator, independent transmission provider, or other transmission organization finally approved by the Commission or a Regional Energy Services Commission for the operation of transmission facilities.”.

(e) DEFINITION OF REGIONAL ENERGY SERVICES COMMISSION.—Section 3 of the Federal Power Act (16 U.S.C. 796(27)) is amended by adding at the end the following:

“(25) REGIONAL ENERGY SERVICES COMMISSION.—The term ‘Regional Energy Services Commission’ or ‘RESC’ means a voluntary multi-state entity designed to develop and promote energy policies on regional levels.”.

## **Subtitle B—State Coordination**

### **SEC. 1211. REGIONAL ENERGY SERVICES COMMISSIONS.**

The Federal Power Act is amended by adding at the end the following:

#### **“PART IV - REGIONAL ENERGY SERVICES COMMISSIONS**

#### **“ESTABLISHMENT OF REGIONAL ENERGY SERVICES COMMISSIONS**

“SEC 401. States are authorized to enter into agreements to establish Regional Energy Services Commissions (RESC).

#### **“REGIONAL ENERGY SERVICES COMMISSIONS REQUIREMENTS**

“SEC. 402. (a) In order for States to form a Regional Energy Services Commission, the following requirements must be satisfied:

“(1) A region for RESC purposes requires a geographic range that encompasses a regional market that includes an electric load equal to at least [5] percent of the nation’s total electric load, based on the calculation by the Energy Information Administration (EIA) Annual Report of electricity end use from utility and nonutility sales for the most

1 recent calendar year for which the EIA has information.

2 “(2) A region for RESC purposes requires that each member of a RESC (Member  
3 State) share a border with at least one other Member State.

4 “(3) A RESC shall be composed of one member from each State, appointed by the  
5 Governor as provided by state law. A State may be a voting member of only one RESC.

6 “(4) A RESC shall develop a program to coordinate the review, certification and  
7 permitting of interstate transmission infrastructure to be developed in the region and may  
8 exercise authority for siting transmission of electric facilities to the extent the affected  
9 Member State of the RESC vests in the RESC its transmission siting authority.

10 “(5) A RESC shall seek to ensure that there is no undue discrimination in the  
11 provision of transmission service and encourage the development of independent entities  
12 to operate transmission systems.

13 “(6) A RESC shall have the capability to address rate requirements for or in  
14 connection with the transmission or sale of electric energy at wholesale within that  
15 RESC’s region.

16 “(7) Unless a contract provides otherwise, a RESC may not modify, abrogate or  
17 order refunds with respect to a contractual transaction subject to the jurisdiction of the  
18 RESC, except upon a finding that such action is necessary to protect the public interest.

19 “(8) A RESC shall adopt a charter setting forth decisionmaking procedures, and  
20 the specific authorities set forth in section 403 that the RESC would exercise.

21 “(b) A RESC shall file a copy of its charter, along with all protocols, rules, by-laws and  
22 other administrative and substantive provisions and any amendment to, with the Secretary of  
23 Energy within 30 days of completion.

24 “(c) CERTIFICATION.—The Secretary of Energy shall review any filing to confirm that it  
25 is consistent with the requirements of section 402. The Secretary of Energy shall approve or  
26 disapprove the filing within 60 days from the date of the filing. If the Secretary of Energy  
27 disapproves a filing, the Secretary shall notify each of the Member States of the reasons for the  
28 disapproval and the specific actions required for approval. After the expiration of the 60-day  
29 period, the RESC filing will be deemed approved and certified.

#### 30 **“REGIONAL ENERGY SERVICES COMMISSION JURISDICTION**

31 **“SEC.403.** (a) A RESC shall have primary jurisdiction over energy services to the extent agreed  
32 to in a RESC charter.

33 (b) Energy services for Part IV purposes may include:

34 “(1) transmission infrastructure planning, certification and siting in the RESC  
35 region;

36 “(2) identification of resource needs, supply and interconnection in the RESC  
37 region;

38 “(3) rate design and revenue requirements for transmission and wholesale sales in  
39 the RESC region;

40 “(4) market power review and market monitoring efforts in the RESC region;

41 “(5) encouragement of cost-effective and environmentally advanced infrastructure  
42 solutions, including demand response and load management, energy efficiency and  
43 distributed generation, and increased fuel diversity in the RESC region;

44 “(6) cooperation with Federal agencies which manage Federal Land and natural  
45 resources within a State or States that are members of a RESC to ensure timely and  
46 coordinated completion of environmental and other regulatory reviews;

1 “(7) formation and approval of Transmission Organizations pursuant to section  
2 407 in the RESC region;

3 “(8) promoting reliability standards and rules; and

4 “(9) developing adequate enforcement mechanisms.

5 **“REGIONAL ENERGY SERVICES COMMISSION REVIEW**

6 **“SEC. 404.** (a) A RESC may offer recommendations, findings, and advice to the State  
7 regulatory authorities in the region. If a State regulatory authority issues an order or ruling that  
8 conflicts with a recommendation or finding by the RESC for energy services that affect  
9 transmission of electric energy in interstate commerce or wholesale sale of electric energy in  
10 interstate commerce, the RESC may petition the Commission for review of the order or ruling, or  
11 the State regulatory authority may certify such an issue to the Commission for its review. Such a  
12 request for review must be filed within 30 days after the issuance of such order.

13 “(b) A request for review or certification shall set forth specifically the ground or grounds  
14 upon which such request or certification is based. A copy of such request for review or  
15 certification shall be transmitted to the appropriate RESC or State regulatory authority on the  
16 same day it is filed with the Commission. Upon the filing of such a request for review or  
17 certification, the Commission shall have jurisdiction to affirm, modify, or set aside such State  
18 regulatory order or ruling in whole or in part if the Commission finds that the State regulatory  
19 authority’s order or ruling would result in undue discrimination in the provision of the  
20 transmission of electric energy or sale of such energy at wholesale within the relevant RESC  
21 region or results in unjust and unreasonable rates, charges or classifications within the relevant  
22 RESC region.

23 **“TRANSMISSION ORGANIZATIONS**

24 **“SEC. 405.** (a) To be approved by a RESC, a Transmission Organization must meet the  
25 following requirements:

26 “(1) A Transmission Organization is independent of all market participants.

27 “(2) A Transmission Organization will oversee or control interstate transmission  
28 facilities within a specific region to remove opportunities for unduly discriminatory or  
29 preferential transmission practices. The Transmission Organization shall own  
30 transmission assets, operate assets owned by other entities, or oversee the operation of  
31 assets owned by other entities.

32 “(3) A Transmission Organization has the exclusive authority for maintaining the  
33 short-term reliability of the transmission grid it operates or oversees.

34 “(4) A Transmission Organization is the sole provider of transmission service and  
35 the sole administrator of a non-discriminatory open access tariff for the facilities under its  
36 control or oversight.

37 “(5) A Transmission Organization will develop market mechanisms for  
38 identifying and managing congestion but such mechanisms need not be based upon  
39 locational marginal pricing.

40 “(6) Each Transmission Organization will implement procedures to address  
41 parallel path flows.

42 “(7) A Transmission Organization will operate a single open access same time  
43 information system for all transmission facilities under its control or oversight and shall  
44 calculate total transmission capacity and available transmission capacity and will identify  
45 for the RESC the transmission capacity necessary to ensure that native load requirements  
46 of load serving entities within the region managed by the Transmission Organization are

met.

“(8) A Transmission Organization will provide for a qualified, independent market monitor to report directly to the Transmission Organization and RESC, and who shall provide appropriate reports to interested States, and other appropriate entities.

“(9) A Transmission Organization shall facilitate non-discriminatory scheduling and interconnection arrangements on the transmission grid it operates or oversees and with those Transmission Organizations overseeing or controlling adjacent interstate transmission facilities.

“(10) A Transmission Organization shall provide participating transmitting utilities with the opportunity to recover all legitimate, verifiable, prudently incurred costs of forming the Transmission Organization.

“(11) A Transmission Organization will provide for the elimination of so-called “pancaked” transmission rates within the Transmission Organization’s region.

“(12) A Transmission Organization can administer a real time, day ahead, or such other market as deemed appropriate within the region.

“(b) FEDERAL UTILITY PARTICIPATION IN TRANSMISSION ORGANIZATIONS.—Each Federal power marketing agency and Tennessee Valley Authority may enter into a contract, agreement or other arrangement transferring control and use of all or part of the transmission system of a Federal utility to a Transmission Organization approved by the Commission or a RESC subject to the statutory and other legal and treaty obligations applicable to the Federal utility’s transmission system, including recovery of all transmission costs and expenses, existing contractual obligations, any third-party financing obligations.

#### **“PART II LIMITATION**

“**SEC. 406.** Public utilities in States in a RESC shall not be subject to the Commission’s authority under Part II, except as provided in sections 407 and 408 and to the extent authorities are not exercised by the RESC.

#### **“COMMISSION JURISDICTION**

“**SEC. 407.** A RESC or any State regulatory authority may petition the Commission for a resolution of a conflict regarding transmission of electric energy or wholesale sales of electric energy between adjacent regions. The Commission shall exercise its authority under the Federal Power Act to resolve any such conflicts.

#### **“SAVINGS CLAUSE**

“**SEC. 408.** Nothing in Part IV shall change the Commission’s exercise of its Federal Power Act authority granted pursuant to sections 202(c - g), 204, and 209(b) and (c). Nothing in this Part shall limit the Commission’s Federal Power Act authority over States that are not members of a RESC.

“**SEC. 409.** Nothing in Part IV shall apply to Alaska or Hawaii.”

### **Subtitle C —Improving Transmission Infrastructure**

#### **SEC. 1221. CONGESTION ZONE DESIGNATION.**

Within one year after enactment of this section, and every 3 years thereafter, the Secretary of Energy shall conduct a study of our nation’s transmission infrastructure to identify areas of congestion and inefficiency in the transmission of electric power over both private and publicly owned land. Any networks that the Secretary finds to be congested to a level that affects reliability or economic security, shall be listed in a report as Potential Congestion Zones. The Secretary shall inform the Governor of the States of the progress of the study and

1 established procedures to obtain public comment on the designation of a Potential Congestion  
2 Zone and offer solutions. After considering alternatives and recommendations from all  
3 interested parties, the Secretary may designate a transmission system as a ‘Congestion Zone.’  
4 **SEC. 1222. TRANSMISSION DEVELOPMENT CERTIFICATE.**

5 (a) The Commission may, after notice and an opportunity for hearing, issue a certificate  
6 of public convenience and necessity (transmission development certificate) to an entity for the  
7 construction or modification of transmission facilities if such proposed transmission facilities are  
8 located in a Congestion Zone designated by the Secretary of Energy and such proposed  
9 transmission facilities are in the public interest.

10 (b) Applications for a transmission development certificate shall be submitted to the  
11 Commission under oath.

12 (c) The Commission shall issue rules setting forth the form of application, the  
13 information it is to contain, and the manner of service of notice of the transmission development  
14 certificate application upon interested parties.

15 (d) In any proceeding before the Commission under this section, the Commission shall  
16 afford each State and Regional Energy Services Commission in which a transmission facility  
17 covered by the transmission development certificate is or will be located as well as each affected  
18 Federal agency and Indian tribe, private property owners and other interested persons, a  
19 reasonable opportunity to present their views and recommendations with respect to the need for  
20 and impact of a facility covered by the transmission development certificate.

21 (e) Subject to subsection (f), in the case of a transmission development certificate issued  
22 for transmission facilities to be located on property other than property owned by the United  
23 States or a State, if a holder of a transmission development certificate issued by the Commission  
24 pursuant to paragraph (a) cannot acquire by contract, or is unable to agree with the owner of the  
25 land to the compensation, at fair market value, to be paid for, the necessary lands or interests  
26 therein to construct, operate, and maintain the transmission facility that is the subject of the  
27 permit, it may acquire the right-of-way by the exercise of the right of eminent domain in the  
28 district court of the United States for the district in which the land to be subject to the  
29 right-of-way is located, or in the appropriate court of the State in which the land is located. The  
30 practice and procedure in any action or proceeding for that purpose in the district court of the  
31 United States shall conform as nearly as practicable to the practice and procedures in similar  
32 action or proceeding in the courts of the State where the property is situated, except that the  
33 United States district courts shall only have jurisdiction of cases when the amount claimed by the  
34 owner of the property to be condemned exceeds \$3000.

35 (f) If a State is a member of a Regional Energy Services Commission (RESC) and  
36 pursuant to its RESC charter vests its transmission siting authority in the RESC, the Commission  
37 shall have no authority to issue a transmission development certificate for facilities that are (1)  
38 proposed to be located on property not owned by the United States or a State and (2) within the  
39 geographic boundary of a RESC Member State. If a Member State has not vested its  
40 transmission siting authority in its RESC, the Commission may issue a transmission  
41 development certificate for facilities that are (1) proposed to be located on property not owned  
42 by the United States or a State and (2) within the geographic boundary of a RESC Member State  
43 if that State has failed to initiate action on an application for transmission development within 60  
44 days of the filing of such an application or if that State fails to complete and finalize action  
45 within 18 months of the filing of such an application.

## 46 **Subtitle D —Reliability**

1     **SEC. 1231. ELECTRIC RELIABILITY STANDARDS.**

2         (a) Part II of the Federal Power Act (16 U.S.C 824, et seq.) is adding the following:

3     **“SEC. 215. ELECTRIC RELIABILITY.**

4         “(a) DEFINITIONS.—For purposes of this section—

5             “(1) The term ‘bulk-power system’ means—

6                 “(A) facilities, including control systems, necessary for operating  
7                 interconnected electric energy transmission networks (or any portion thereof); and

8                 “(B) electric energy from generation facilities needed to maintain the  
9                 reliability of interconnected electric energy transmission networks.

10         The term does not include facilities used in the local distribution of electric energy.

11         “(2) The terms ‘Electric Reliability Organization’ and ‘ERO’ mean the  
12         organization certified by the Commission under subsection (c) the purpose of which is to  
13         establish and enforce reliability standards for the bulk-power system, subject to  
14         Commission review.

15         “(3) The term ‘reliability standard’ means a requirement, approved by the  
16         Commission under this section, to provide for reliable operation of the bulk-power  
17         system. The term includes requirements for the operation of existing bulk-power system  
18         facilities and the design of planned additions or modifications to such facilities to the  
19         extent necessary to provide for reliable operation of the bulk-power system, but the term  
20         does not include any requirement to enlarge such facilities or to construct new  
21         transmission capacity or generation capacity.

22         “(4) The term ‘reliable operation’ means operating the facilities of the bulk-power  
23         system within equipment and electric system thermal, voltage, and stability limits so that  
24         instability, uncontrolled separation, or cascading failures of such system will not occur as  
25         a result of a sudden disturbance or unanticipated failure of system facilities.

26         “(5) The term ‘Interconnection’ means a geographic area in which the operation  
27         of bulk-power system facilities is synchronized such that the failure of one or more of  
28         such facilities may adversely affect the ability of the operators of other facilities within  
29         the system to maintain reliable operation of the facilities within their control.

30         “(6) The term ‘regional entity’ means an entity having enforcement authority  
31         pursuant to subsection (e)(4).

32         “(b) JURISDICTION AND APPLICABILITY.—

33             “(1) The Commission shall have jurisdiction, within the United States, over the  
34             ERO certified by the Commission under subsection (c), any regional entities, and all  
35             users, owners and operators of the bulk-power system, including the entities described in  
36             section 201(f), for purposes of approving reliability standards established under this  
37             section and enforcing compliance with this section. All users, owners and operators of  
38             the bulk-power system shall comply with reliability standards that take effect under this  
39             section.

40             “(2) The Commission shall issue a final rule to implement the requirements of this  
41             section not later than 180 days after the date of enactment of this section.

42         “(c) CERTIFICATION.—Following the issuance of a Commission rule under subsection  
43         (b)(2), any person may submit an application to the Commission for certification as the Electric  
44         Reliability Organization (ERO). The Commission may certify one such ERO if the Commission  
45         determines that such ERO—

46             “(1) has the ability to develop and enforce, subject to subsection (e)(2), reliability

standards that provide for an adequate level of reliability of the bulk-power system;

“(2) has established rules that—

“(A) assure its independence of the users and owners and operators of the bulk-power system, while assuring fair stakeholder representation in the selection of its directors and balanced decisionmaking in any ERO committee or subordinate organizational structure;

“(B) allocate equitably reasonable dues, fees, and other charges among end users for all activities under this section;

“(C) provide fair and impartial procedures for enforcement of reliability standards through the imposition of penalties in accordance with subsection (e) (including limitations on activities, functions, or operations, or other appropriate sanctions);

“(D) provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards and otherwise exercising its duties; and

“(E) provide for taking, after certification, appropriate steps to gain recognition in Canada and Mexico.

“(d) RELIABILITY STANDARDS.—

“(1) The Electric Reliability Organization shall file each reliability standard or modification to a reliability standard that it proposes to be made effective under this section with the Commission.

“(2) The Commission may approve by rule or order a proposed reliability standard or modification to a reliability standard if it determines that the standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission shall give due weight to the technical expertise of the Electric Reliability Organization with respect to the content of a proposed standard or modification to a reliability standard and to the technical expertise of a regional entity organized on an Interconnection-wide basis with respect to a reliability standard to be applicable within that Interconnection, but shall not defer with respect to the effect of a standard on competition. A proposed standard or modification shall take effect upon approval by the Commission.

“(3) The Electric Reliability Organization shall rebuttably presume that a proposal from a regional entity organized on an Interconnection-wide basis for a reliability standard or modification to a reliability standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest.

“(4) The Commission shall remand to the Electric Reliability Organization for further consideration a proposed reliability standard or a modification to a reliability standard that the Commission disapproves in whole or in part.

“(5) The Commission, upon its own motion or upon complaint, may order the Electric Reliability Organization to submit to the Commission a proposed reliability standard or a modification to a reliability standard that addresses a specific matter if the Commission considers such a new or modified reliability standard appropriate to carry out this section.

“(6) The final rule adopted under subsection (b)(2) shall include fair processes for the identification and timely resolution of any conflict between a reliability standard and

1 any function, rule, order, tariff, rate schedule, or agreement accepted, approved, or  
2 ordered by the Commission applicable to a Transmission Organization. Such  
3 Transmission Organization shall continue to comply with such function, rule, order,  
4 tariff, rate schedule or agreement accepted approved, or ordered by the Commission  
5 until—

6 “(A) the Commission finds a conflict exists between a reliability standard  
7 and any such provision;

8 “(B) the Commission orders a change to such provision pursuant to  
9 section 206 of this part; and

10 “(C) the ordered change becomes effective under this part.

11 If the Commission determines that a reliability standard needs to be changed as a result  
12 of such a conflict, it shall order the ERO to develop and file with the Commission a  
13 modified reliability standard under paragraph (4) or (5) of this subsection.

14 “(e) ENFORCEMENT.—

15 (1) The ERO may impose, subject to paragraph (2), a penalty on a user or owner  
16 or operator of the bulk-power system for a violation of a reliability standard approved by  
17 the Commission under subsection (d) if the ERO, after notice and an opportunity for a  
18 hearing—

19 “(A) finds that the user or owner or operator has violated a reliability  
20 standard approved by the Commission under subsection (d); and

21 “(B) files notice and the record of the proceeding with the Commission.

22 “(2) A penalty imposed under paragraph (1) may take effect not earlier than the  
23 31st day after the Electric Reliability Organization files with the Commission notice of  
24 the penalty and the record of proceedings. Such penalty shall be subject to review by the  
25 Commission, on its own motion or upon application by the user, owner or operator that is  
26 the subject of the penalty filed within 30 days after the date such notice is filed with the  
27 Commission. Application to the Commission for review, or the initiation of review by the  
28 Commission on its own motion, shall not operate as a stay of such penalty unless the  
29 Commission otherwise orders upon its own motion or upon application by the user,  
30 owner or operator that is the subject of such penalty. In any proceeding to review a  
31 penalty imposed under paragraph (1), the Commission, after notice and opportunity for  
32 hearing (which hearing may consist solely of the record before the Electric Reliability  
33 Organization and opportunity for the presentation of supporting reasons to affirm,  
34 modify, or set aside the penalty), shall by order affirm, set aside, reinstate, or modify the  
35 penalty, and, if appropriate, remand to the Electric Reliability Organization for further  
36 proceedings. The Commission shall implement expedited procedures for such hearings.

37 “(3) On its own motion or upon complaint, the Commission may order  
38 compliance with a reliability standard and may impose a penalty against a user or owner  
39 or operator of the bulk-power system, if the Commission finds, after notice and  
40 opportunity for a hearing, that the user or owner or operator of the bulk-power system has  
41 engaged or is about to engage in any acts or practices that constitute or will constitute a  
42 violation of a reliability standard.

43 “(4) The Commission shall establish regulations directing the ERO to enter into  
44 an agreement to delegate authority to a regional entity for the purpose of proposing  
45 reliability standards to the ERO and enforcing reliability standards under paragraph (1)  
46 if—



1 “(A) the regional entity is

2 “(i) a Regional Energy Services Commission; or

3 “(ii) governed by an independent board, a balanced stakeholder  
4 board, or a combination independent and balanced stakeholder board;

5 “(B) the regional entity otherwise satisfies the provisions of subsection  
6 (c)(1) and (2); and

7 “(C) the agreement promotes effective and efficient administration of  
8 bulk-power system reliability.

9 “The Commission may modify such delegation. The ERO and the Commission shall  
10 rebuttably presume that a proposal for delegation to a regional entity organized on an  
11 Interconnection-wide basis promotes effective and efficient administration of bulk-power  
12 system reliability and should be approved. Such regulation may provide that the  
13 Commission may assign the ERO’s authority to enforce reliability standards under  
14 paragraph (1) directly to a regional entity consistent with the requirements of this  
15 paragraph.

16 “(5) The Commission may take such action as is necessary or appropriate against  
17 the ERO or a regional entity to ensure compliance with a reliability standard or any  
18 Commission order affecting the ERO or a regional entity.

19 “(6) Any penalty imposed under this section shall bear a reasonable relation to the  
20 seriousness of the violation and shall take into consideration the efforts of such user,  
21 owner, or operator to remedy the violation in a timely manner.

22 “(f) CHANGES IN ELECTRICITY RELIABILITY ORGANIZATION RULES.—The Electric  
23 Reliability Organization shall file with the Commission for approval any proposed rule or  
24 proposed rule change, accompanied by an explanation of its basis and purpose. The Commission,  
25 upon its own motion or complaint, may propose a change to the rules of the Electric Reliability  
26 Organization. A proposed rule or proposed rule change shall take effect upon a finding by the  
27 Commission, after notice and opportunity for comment, that the change is just, reasonable, not  
28 unduly discriminatory or preferential, is in the public interest, and satisfies the requirements of  
29 subsection (c).

30 “(g) RELIABILITY REPORTS.—The Electric Reliability Organization shall conduct  
31 periodic assessments of the reliability and adequacy of the bulk-power system in North America.

32 “(h) COORDINATION WITH CANADA AND MEXICO.—The President is urged to negotiate  
33 international agreements with the governments of Canada and Mexico to provide for effective  
34 compliance with reliability standards and the effectiveness of the Electric Reliability  
35 Organization in the United States and Canada or Mexico.

36 “(i) SAVINGS PROVISIONS.—

37 “(1) The Electric Reliability Organization shall have authority to develop and  
38 enforce compliance with reliability standards for only the bulk-power system.

39 “(2) This section does not authorize the Electric Reliability Organization or the  
40 Commission to order the construction of additional generation or transmission capacity  
41 or to set and enforce compliance with standards for adequacy or safety of electric  
42 facilities or services.

43 “(3) Nothing in this section shall be construed to preempt any authority of any  
44 State to take action to ensure the safety, adequacy, and reliability of electric service  
45 within that State, as long as such action is not inconsistent with any reliability standard.

46 “(4) Within 90 days of the application of the Electric Reliability Organization or

1 other affected party, and after notice and opportunity for comment, the Commission shall  
2 issue a final order determining whether a State action is inconsistent with a reliability  
3 standard, taking into consideration any recommendation of the Electric Reliability  
4 Organization.

5 “(5) The Commission, after consultation with the Electric Reliability  
6 Organization, may stay the effectiveness of any State action, pending the Commission’s  
7 issuance of a final order.

8 “(j) REGIONAL ENERGY SERVICES COMMISSIONS.—Any Regional Energy Service  
9 Commissions (RESC) may provide advice to the Electric Reliability Organization, a regional  
10 entity, or the Commission regarding the governance of an existing or proposed regional entity  
11 within the same region, whether a standard proposed to apply within the region is just,  
12 reasonable, not unduly discriminatory or preferential, and in the public interest, whether related  
13 reliability fees proposed to be assessed within the region are just, reasonable, not unduly  
14 discriminatory or preferential, and in the public interest and any other responsibilities requested  
15 by the Commission. The Commission may give deference to the advice of any such RESC if  
16 that body is organized on an Interconnection-wide basis.

17 “(k) APPLICATION TO ALASKA AND HAWAII.—The provisions of this section do not apply  
18 to Alaska or Hawaii.”.

19 (b) Section 211(b) of the Federal Power Act (16 U.S.C. 824j(b)) is amended by striking  
20 “consistently applied regional or national reliability standards, guidelines, or criteria” and  
21 inserting “reliability standards established under section 215.”

## 22 **Subtitle E—Fair Access to the Transmission System**

### 23 **SEC. 1241. OPEN ACCESS TRANSMISSION BY CERTAIN UTILITIES.**

24 Part II of the Federal Power Act is further amended by inserting after section 211 the  
25 following:

#### 26 **“OPEN ACCESS BY CERTAIN UTILITIES**

27 **“SEC. 211A. (a) IN GENERAL.—**Subject to section 212(h), the Commission may, by rule  
28 or order, require an unregulated transmitting utility to provide transmission services—

29 “(1) at rates that are comparable to those that the unregulated transmitting utility  
30 charges itself, and

31 “(2) on terms and conditions (not relating to rates) that are comparable to those  
32 under Commission rules that require public utilities to offer open access transmission  
33 services and that are not unduly discriminatory or preferential.

34 **“(b) EXEMPTIONS.—**The Commission shall exempt from any rule or order under this  
35 subsection any unregulated transmitting utility that—

36 “(1) sells no more than 4,000,000 megawatt hours of electricity per year; and

37 “(2) does not own or operate any transmission facilities that are necessary for  
38 operating an interconnected transmission system (or any portion thereof); or

39 “(3) meets other criteria the Commission determines to be in the public interest.

40 **“(c) RATE CHANGING PROCEDURES.—**The rate changing procedures applicable to public  
41 utilities under subsections (c) and (d) of section 205 are applicable to unregulated transmitting  
42 utilities for purposes of this section.

43 **“(d) REMAND.—**In exercising its authority under subsection(a)(1), the Commission may  
44 remand transmission rates to an unregulated transmitting utility for review and revision where  
45 necessary to meet the requirements of subsection (a)(1).

46 **“(e) SECTION 211 REQUESTS.—**The provision of transmission services under subsection

(a) does not preclude a request for transmission services under section 211.

“(f) PRIVATE USE.—The Commission may not require a State or municipality to take action under this section that constitutes a private business use for purposes of section 141 of the Internal Revenue Code of 1986 (26 U.S.C. 141).

“(g) DEFINITION.—For purposes of this subsection, the term ‘unregulated transmitting utility’ means an entity that—

“(1) owns or operates facilities used for the transmission of electric energy in interstate commerce, and

“(2) is either an entity described in section 201(f) or a rural electric cooperative.”.

#### **SEC. 1242. TRANSMISSION INFRASTRUCTURE INVESTMENT.**

Part II of the Federal Power Act is amended by adding at the end the following:

##### **“SEC. \_\_. TRANSMISSION INVESTMENT INCENTIVES**

“Within 1 year after the enactment of this section, the Commission shall establish, by rule, transmission pricing policies to support interstate wholesale markets for electric power and expanded transmission capacity needed to sustain the growth of wholesale competition. Policies and standards established under the section shall specifically—

“(1) promote economically efficient enlargement of transmission networks, including the provision of proper price signals so that new generation and transmission is built where it provides the lowest overall cost to consumers;

“(2) encourage deployment of transmission technologies to increase capacity and efficiency of existing networks;

“(3) provide an adequate return on equity; and

“(4) reduce congestion on transmission networks.”

#### **SEC. 1243. INFRASTRUCTURE COST ALLOCATION PRINCIPLE.**

(a) Within one year after the enactment of this Act, the Commission shall issue a final rule regarding the allocation of costs associated with the interconnection of new transmission facilities as well as the modification, expansion or upgrade of existing transmission facilities (hereinafter “transmission expansion”).

(b) The final rule shall ensure that the costs of any transmission expansion are allocated in such a way that all users of the transmission expansion bear the appropriate share of its costs.

(c) In its rulemaking, the Commission shall consider system-wide benefits as benefits that include, but are not limited to projects that—

(1) provide reliability and adequacy for regional needs;

(2) accommodate load growth on a regional level;

(3) increase transmission capability into congested areas;

(4) facilitate major regional and inter-regional power transfers (seams).

(d) The cost of transmission expansion projects that do not provide sufficient system-wide benefits but rather primarily benefit only a subset of users or market participants shall be recovered from that subset on an incremental basis.

## **Subtitle F—Market Transparency, Anti-Manipulation and Enforcement**

#### **SEC. 1251. MARKET TRANSPARENCY RULES.**

Part II of the Federal Power Act is amended by adding after section 215 as added by this Act the following:

1     **“SEC. 216. MARKET TRANSPARENCY RULES.**

2     “(a) COMMISSION RULES.—Not later than 180 days after the date of enactment of this  
3 section, the Commission shall issue rules establishing an electronic information system to  
4 provide the Commission and the public with access to such information as is necessary or  
5 appropriate to facilitate price transparency and participation in markets subject to the  
6 Commission’s jurisdiction. Such systems shall provide statistical information about the  
7 availability and market price of wholesale electric energy and transmission services to the  
8 Commission, State commissions, buyers and sellers of wholesale electric energy, users of  
9 transmission services, and the public on a timely basis.

10    “(b) INFORMATION REQUIRED.—The Commission shall require—

11       “(1) each Transmission Organization or, where no Transmission Organization is  
12 operating, each transmitting utility to provide information about the available capacity of  
13 transmission facilities operated by the organization or transmitting utility; and

14       “(2) each Transmission Organization or broker or exchange to provide aggregate  
15 information about the amount and price of physical sales of electric energy at wholesale  
16 in interstate commerce it transacts.

17    “(c) DEFINITION.—For purposes of this section, the term ‘broker or exchange’ means an  
18 entity that matches offers to sell and offers to buy physical sales of wholesale electric energy in  
19 interstate commerce.

20    “(d) PROTECTION OF SENSITIVE INFORMATION.—The Commission shall exempt from  
21 disclosure information it determines would, if disclosed, be detrimental to the operation of an  
22 effective market.”.

23     **SEC. 1252. MARKET MANIPULATION.**

24     Part II of the Federal Power Act is amended by adding after section 216 as added by this  
25 Act the following:

26     **“SEC. \_\_. PROHIBITION ON FILING FALSE INFORMATION.**

27     “‘It shall be a violation of this Act for any person willfully and knowingly to report any  
28 information relating to the price of electricity sold at wholesale, which information the person  
29 knew to be false at the time of the reporting, to any governmental entity with the intent to  
30 manipulate the data being compiled by such entity.

31     **“SEC. \_\_. PROHIBITION ON ROUND TRIP TRADING.**

32     “(a) PROHIBITION.—It shall be a violation of this Act for any person willfully and  
33 knowingly to enter into any contract or other arrangement to execute a “round-trip trade” for the  
34 purchase or sale of electric energy at wholesale.

35     “(b) DEFINITION OF ROUND-TRIP TRADE.—For the purposes of this section, the term  
36 ‘round trip trade’ means a transaction, or combination of transactions, in which a person or other  
37 entity—

38       “(1) enters into a contract or other arrangement to purchase from, or sell to, any  
39 other person or other entity electric energy at wholesale;

40       “(2) simultaneously with entering into the contract or arrangement described in  
41 paragraph (1), arranges a financially offsetting trade with such other person or entity for  
42 the same amount of electric energy, at the same location, price, quantity and terms so  
43 that, collectively, the purchase and sale transactions in themselves result in no financial  
44 gain or loss; and

45       “(3) enters into the contract or arrangement with the intent to deceptively affect  
46 reported revenues, trading volumes, or prices.”.

1     **SEC. 1253. ENFORCEMENT.**

2         (a) **CRIMINAL PENALTIES.**—Section 316 of the Federal Power Act (16 U.S.C. 825o) is  
3 amended—

4             (1) in subsection (a), by striking “\$5,000” and inserting “\$1,000,000”, and by  
5 striking “two years” and inserting “five years”;

6             (2) in subsection (b), by striking “\$500” and inserting “\$25,000”; and

7             (3) by striking subsection (c).

8         (b) **CIVIL PENALTIES.**—Section 316A of the Federal Power Act (16 U.S.C. 825-1) is  
9 amended—

10             (1) in subsections (a) and (b), by striking “section 211, 212, 213, or 214” each  
11 place it appears and inserting “Part II”; and

12             (2) in subsection (b) by striking “\$10,000” and inserting “\$1,000,000.”

13     **SEC. 1254. REFUND EFFECTIVE DATE.**

14         Section 206(b) of the Federal Power Act (16 U.S.C. 824e(b)) is amended by—

15             (1) striking “the date 60 days after the filing of such complaint nor later than 5  
16 months after the expiration of such 60-day period” in the second sentence and inserting  
17 “the date of the filing of such complaint nor later than 5 months after the filing of such  
18 complaint”;

19             (2) striking “60 days after” in the third sentence and inserting “of”;

20             (3) striking “expiration of such 60-day period” in the third sentence and inserting  
21 “publication date”; and

22             (4) striking the fifth sentence and inserting: “If no final decision is rendered by  
23 the conclusion of the 180-day period commencing upon initiation of a proceeding  
24 pursuant to this section, the Commission shall state the reasons why it has failed to do so  
25 and shall state its best estimate as to when it reasonably expects to make such decision.”.

26         **Subtitle G— Elimination of Competitive Barriers**

27     **SEC. 1261. SHORT TITLE.**

28         This subtitle may be cited as the ‘Public Utility Holding Company Act of 2003’.

29     **SEC. 1262. DEFINITIONS.**

30         For purposes of this subtitle:

31             (1) The term “affiliate” of a company means any company 5 percent or more of  
32 the outstanding voting securities of which are owned, controlled, or held with power to  
33 vote, directly or indirectly, by such company.

34             (2) The term “associate company” of a company means any company in the same  
35 holding company system with such company.

36             (3) The term “Commission” means the Federal Energy Regulatory Commission.

37             (4) The term “company” means a corporation, partnership, association, joint stock  
38 company, business trust, or any organized group of persons, whether incorporated or not,  
39 or a receiver, trustee, or other liquidating agent of any of the foregoing.

40             (5) The term “electric utility company” means any company that owns or operates  
41 facilities used for the generation, transmission, or distribution of electric energy for sale.

42             (6) The terms “exempt wholesale generator” and “foreign utility company” have  
43 the same meanings as in sections 32 and 33, respectively, of the Public Utility Holding  
44 Company Act of 1935 (15 U.S.C. 79z-5a, 79z-5b), as those sections existed on the day  
45 before the effective date of this subtitle.

46             (7) The term “gas utility company” means any company that owns or operates

1 facilities used for distribution at retail (other than the distribution only in enclosed  
2 portable containers or distribution to tenants or employees of the company operating such  
3 facilities for their own use and not for resale) of natural or manufactured gas for heat,  
4 light, or power.

5 (8) The term “holding company” means—

6 (A) any company that directly or indirectly owns, controls, or holds, with  
7 power to vote, 10 percent or more of the outstanding voting securities of a public  
8 utility company or of a holding company of any public utility company; and

9 (B) any person, determined by the Commission, after notice and  
10 opportunity for hearing, to exercise directly or indirectly (either alone or pursuant  
11 to an arrangement or understanding with one or more persons) such a controlling  
12 influence over the management or policies of any public utility company or  
13 holding company as to make it necessary or appropriate for the protection of  
14 utility customers with respect to rates that such person be subject to the  
15 obligations, duties, and liabilities imposed by this subtitle upon holding  
16 companies.

17 (9) The term “holding company system” means a holding company, together with  
18 its subsidiary companies.

19 (10) The term “jurisdictional rates” means rates established by the Commission  
20 for the transmission of electric energy in interstate commerce, the sale of electric energy  
21 at wholesale in interstate commerce, the transportation of natural gas in interstate  
22 commerce, and the sale in interstate commerce of natural gas for resale for ultimate  
23 public consumption for domestic, commercial, industrial, or any other use.

24 (11) The term “natural gas company” means a person engaged in the  
25 transportation of natural gas in interstate commerce or the sale of such gas in interstate  
26 commerce for resale.

27 (12) The term “person” means an individual or company.

28 (13) The term “public utility” means any person who owns or operates facilities  
29 used for transmission of electric energy in interstate commerce or sales of electric energy  
30 at wholesale in interstate commerce.

31 (14) The term “public utility company” means an electric utility company or a gas  
32 utility company.

33 (15) The term “State commission” means any commission, board, agency, or  
34 officer, by whatever name designated, of a State, municipality, or other political  
35 subdivision of a State that, under the laws of such State, has jurisdiction to regulate  
36 public utility companies.

37 (16) The term “subsidiary company” of a holding company means—

38 (A) any company, 10 percent or more of the outstanding voting securities  
39 of which are directly or indirectly owned, controlled, or held with power to vote,  
40 by such holding company; and

41 (B) any person, the management or policies of which the Commission,  
42 after notice and opportunity for hearing, determines to be subject to a controlling  
43 influence, directly or indirectly, by such holding company (either alone or  
44 pursuant to an arrangement or understanding with one or more other persons) so  
45 as to make it necessary for the protection of utility customers with respect to rates  
46 that such person be subject to the obligations, duties, and liabilities imposed by

1 this subtitle upon subsidiary companies of holding companies.

2 (17) The term “voting security” means any security presently entitling the owner  
3 or holder thereof to vote in the direction or management of the affairs of a company.

4 **SEC. 1263. REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.**

5 The Public Utility Holding Company Act of 1935 (15 U.S.C. 79a, et seq.) is repealed.

6 **SEC. 1264. FEDERAL ACCESS TO BOOKS AND RECORDS.**

7 (a) IN GENERAL.—Each holding company and each associate company thereof shall  
8 maintain, and shall make available to the Commission, such books, accounts, memoranda, and  
9 other records as the Commission determines are necessary to identify costs incurred by a public  
10 utility or natural gas company that is an associate company of such holding company and  
11 necessary or appropriate for the protection of utility customers with respect to jurisdictional  
12 rates.

13 (b) AFFILIATE COMPANIES.—Each affiliate of a holding company or of any subsidiary  
14 company of a holding company shall maintain, and make available to the Commission, such  
15 books, accounts, memoranda, and other records with respect to any transaction with another  
16 affiliate, as the Commission determines are necessary to identify costs incurred by a public  
17 utility or natural gas company that is an associate company of such holding company and  
18 necessary or appropriate for the protection of utility customers with respect to jurisdictional  
19 rates.

20 (c) HOLDING COMPANY SYSTEMS.—The Commission may examine the books, accounts,  
21 memoranda, and other records of any company in a holding company system, or any affiliate  
22 thereof, as the Commission determines are necessary to identify costs incurred by a public utility  
23 or natural gas company within such holding company system and necessary or appropriate for  
24 the protection of utility customers with respect to jurisdictional rates.

25 (d) CONFIDENTIALITY.—No member, officer, or employee of the Commission shall  
26 divulge any fact or information that may come to his or her knowledge during the course of  
27 examination of books, accounts, memoranda, or other records as provided in this section, except  
28 as may be directed by the Commission or by a court of competent jurisdiction.

29 **SEC. 1265. STATE ACCESS TO BOOKS AND RECORDS.**

30 (a) IN GENERAL.—Upon the written request of a State commission having jurisdiction to  
31 regulate a public utility company in a holding company system, and subject to such terms and  
32 conditions as may be necessary and appropriate to safeguard against unwarranted disclosure to  
33 the public of any trade secrets or sensitive commercial information, a holding company or its  
34 associate company or affiliate thereof, wherever located, shall produce for inspection books,  
35 accounts, memoranda, and other records that—

36 (1) have been identified in reasonable detail in a proceeding before the State  
37 commission;

38 (2) the State commission determines are necessary to identify costs incurred by  
39 such public utility company; and

40 (3) are necessary for the effective discharge of the responsibilities of the State  
41 commission with respect to such proceeding.

42 (b) EFFECT ON STATE LAW.—Nothing in this section shall preempt applicable State law  
43 concerning the provision of books, accounts, memoranda, or other records, or in any way limit  
44 the rights of any State to obtain books, accounts, memoranda, or other records under Federal  
45 law, contract, or otherwise.

46 (c) COURT JURISDICTION.—Any United States district court located in the State in which

1 the State commission referred to in subsection (a) is located shall have jurisdiction to enforce  
2 compliance with this section.

3 (d) LIMITATION.—Subsection (a) does not apply to any person that is a holding company  
4 solely by reason of ownership of one or more qualifying facilities under the Public Utility  
5 Regulatory Policies Act of 1978 (16 U.S.C. 2601, et seq.).

6 **SEC. 1266. EXEMPTION AUTHORITY.**

7 (a) RULEMAKING.—Not later than 90 days after the date of enactment of this subtitle, the  
8 Commission shall promulgate a final rule to exempt from the requirements of section 1264 any  
9 person that is a holding company, solely with respect to one or more—

10 (1) qualifying facilities under the Public Utility Regulatory Policies Act of 1978;

11 (2) exempt wholesale generators; or

12 (3) foreign utility companies.

13 (b) OTHER AUTHORITY.—If, upon application or upon its own motion, the Commission  
14 finds that the books, accounts, memoranda, and other records of any person are not relevant to  
15 the jurisdictional rates of a public utility company or natural gas company, or if the Commission  
16 finds that any class of transactions is not relevant to the jurisdictional rates of a public utility  
17 company, the Commission shall exempt such person or transaction from the requirements of  
18 section 1264.

19 **SEC. 1267. AFFILIATE TRANSACTIONS.**

20 (a) COMMISSION AUTHORITY UNAFFECTED.—Nothing in this subtitle shall limit the  
21 authority of the Commission under the Federal Power Act (16 U.S.C. 791a, et seq.) to require  
22 that jurisdictional rates are just and reasonable, including the ability to deny or approve the pass  
23 through of costs, the prevention of cross-subsidization, and the promulgation of such rules and  
24 regulations as are necessary or appropriate for the protection of utility consumers.

25 (b) RECOVERY OF COSTS.—Nothing in this subtitle shall preclude the Commission or a  
26 State commission from exercising its jurisdiction under otherwise applicable law to determine  
27 whether a public utility company, public utility, or natural gas company may recover in rates any  
28 costs of an activity performed by an associate company, or any costs of goods or services  
29 acquired by such public utility company, public utility, or natural gas company from an associate  
30 company.

31 **SEC. 1268. APPLICABILITY.**

32 Except as otherwise specifically provided in this subtitle shall apply to, or be deemed to  
33 include—

34 (1) the United States;

35 (2) a State or any political subdivision of a State;

36 (3) any foreign governmental authority not operating in the United States;

37 (4) any agency, authority, or instrumentality of any entity referred to in paragraph

38 (1), (2), or (3); or

39 (5) any officer, agent, or employee of any entity referred to in paragraph (1), (2),

40 or (3) acting as such in the course of such officer, agent, or employee's official duty.

41 **SEC. 1269. EFFECT ON OTHER REGULATIONS.**

42 Nothing in this subtitle precludes the Commission or a State commission from exercising  
43 its jurisdiction under otherwise applicable law to protect utility customers.

44 **SEC. 1270. ENFORCEMENT.**

45 The Commission shall have the same powers as set forth in sections 306 through 317 of  
46 the Federal Power Act (16 U.S.C. 825e-825p) to enforce the provisions of this subtitle.

47 **SEC. 1271. SAVINGS PROVISIONS.**



(a) IN GENERAL.—Nothing in this subtitle prohibits a person from engaging in or continuing to engage in activities or transactions in which it is legally engaged or authorized to engage on the date of enactment of this Act.

(b) EFFECT ON OTHER COMMISSION AUTHORITY.—Nothing in this subtitle limits the authority of the Commission under the Federal Power Act (16 U.S.C. 791a, et seq.) (including section 301 of that Act) or the Natural Gas Act (15 U.S.C. 717, et seq.) (including section 8 of that Act).

**SEC. 1272. IMPLEMENTATION.**

Not later than 12 months after the date of enactment of this Act, the Commission shall—

(1) promulgate such regulations as may be necessary or appropriate to implement this subtitle; and

(2) submit to the Congress detailed recommendations on technical and conforming amendments to Federal law necessary to carry out this subtitle and the amendments made by this subtitle.

**SEC. 1273. TRANSFER OF RESOURCES.**

All books and records that relate primarily to the functions transferred to the Commission under this subtitle shall be transferred from the Securities and Exchange Commission to the Commission.

**SEC. 1274. EFFECTIVE DATE.**

This subtitle shall take effect 12 months after the date of enactment of this Act.

**SEC. 1275. CONFORMING AMENDMENT TO THE FEDERAL POWER ACT.**

(a) CONFLICT OF JURISDICTION.—Section 318 of the Federal Power Act (16 U.S.C. 825q) is repealed.

(b) DEFINITIONS.—

(1) Section 201(g) of the Federal Power Act (16 U.S.C. 824(g)) is amended by striking “1935” and inserting “2003”.

(2) Section 214 of the Federal Power Act (16 U.S.C. 824m) is amended by striking “1935” and inserting “2003”.

## **Subtitle H—Public Utility Regulatory Policies Act of 1978**

**SEC. 1281. PROSPECTIVE REPEAL AND RECOVERY OF COSTS.**

(a) PROSPECTIVE REPEAL AND RECOVERY OF COSTS.—Title II of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601, et seq.) is amended by inserting the following after section 214 as added by this Act:

**“SEC. 215. PROSPECTIVE REPEAL AND RECOVERY OF COSTS.**

**“(a) TERMINATION OF MANDATORY PURCHASE AND SALE REQUIREMENTS.—**Section 210 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 824a-3) is amended by adding at the end the following:

**“(m) TERMINATION OF MANDATORY PURCHASE AND SALE REQUIREMENTS.—**

**“(1) OBLIGATION TO PURCHASE.—**After the date of enactment of this subsection, no electric utility shall be required to enter into a new contract or obligation to purchase electric energy from a qualifying cogeneration facility or a qualifying small power production facility under this section if the Commission or a Regional Energy Services Commission finds that the qualifying cogeneration facility or qualifying small power production facility has access to competitive wholesale markets for the sale of electric energy.

1 “(2) OBLIGATION TO SELL.—After the date of enactment of this subsection, no  
2 electric utility shall be required to enter into a new contract or obligation to sell electric  
3 energy to a qualifying cogeneration facility or a qualifying small power production  
4 facility under this section if competing retail electric suppliers are able to provide electric  
5 energy to the qualifying cogeneration facility or qualifying small power production  
6 facility.

7 “(3) NO EFFECT ON EXISTING RIGHTS AND REMEDIES.—Nothing in this subsection  
8 affects the rights or remedies of any party under any contract or obligation, in effect on  
9 the date of enactment of this subsection, to purchase electric energy or capacity from or  
10 to sell electric energy or capacity to a facility under this Act (including the right to  
11 recover costs of purchasing electric energy or capacity).

12 (b) OWNERSHIP LIMITS.—

13 (1) Section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)) is amended  
14 to read as follows:

15 “(C) ‘qualifying small power production facility’ means a small power production  
16 facility which the Commission determines, by rule, meets requirements (including  
17 requirements respecting minimum size, fuel use, and fuel efficiency) that the  
18 Commission, by rule, may prescribe;”.

19 (2) Section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)) is amended  
20 to read as follows:

21 “(B) ‘qualifying cogeneration facility’ means a cogeneration facility which the  
22 Commission determines, by rule, meets requirements (including requirements respecting  
23 minimum size, fuel use, and fuel efficiency) the Commission, by rule, may prescribe;”.

24 (c) RECOVERY OF COSTS.—The Commission shall issue and enforce regulations to  
25 ensure that an electric utility recovers all costs associated with its purchases of electric energy  
26 or capacity from a qualifying facility under a legally enforceable obligation entered into or  
27 imposed under section 210 before the date of enactment of this section. These regulations shall  
28 be treated as a rule enforceable under the Federal Power Act (16 U.S.C. 791a-825r).”.

29 (d) TABLE OF CONTENTS.—The table of contents for Title II of the Public Utility  
30 Regulatory Policies Act of 1978 (16 U.S.C. 2601, et. seq) is amended by inserting the following  
31 after the heading for Section 214:

32 “SEC. 215. PROSPECTIVE REPEAL AND RECOVERY OF COSTS.”

33 **SEC. 1282. NET METERING.**

34 (a) ADOPTION OF STANDARD—Section 111(d) of the Public Utility Regulatory Policies  
35 Act of 1978 (16 U.S.C. 2621(d)) is further amended by adding at the end the following:

36 “(11) NET METERING.—

37 “(A) Each electric utility shall make available upon request net metering service  
38 to any electric consumer that the electric utility serves.

39 “(B) For purposes of implementing this paragraph, any reference contained in  
40 this section to the date of enactment of the Public Utility Regulatory Policies Act of  
41 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

42 “(C) Notwithstanding subsections (b) and (c) of section 112, each State  
43 regulatory authority shall consider and make a determination concerning whether it is  
44 appropriate to implement the standard set out in subparagraph (A) not later than 1 year  
45 after the date of enactment of this paragraph.”.

46 (b) SPECIAL RULES FOR NET METERING.—Section 115 of the Public Utility Regulatory

1 Policies Act of 1978 (16 U.S.C. 2625) is further amended by adding at the end the following:

2 “(k) NET METERING.—In undertaking the consideration and making the determination  
3 under section 111 with respect to the standard concerning net metering established by section  
4 111(d)(13), the term net metering service shall mean a service provided in accordance with the  
5 following standards:

6 “(1) RATES AND CHARGES.—An electric utility—

7 “(A) shall charge the owner or operator of an on-site generating facility  
8 rates and charges that are identical to those that would be charged other electric  
9 consumers of the electric utility in the same rate class; and

10 “(B) shall not charge the owner or operator of an on-site generating  
11 facility any additional standby, capacity, interconnection, or other rate or charge.

12 “(2) MEASUREMENT.—An electric utility that sells electric energy to the owner  
13 or operator of an on-site generating facility shall measure the quantity of electric energy  
14 produced by the on-site facility and the quantity of electric energy consumed by the  
15 owner or operator of an on-site generating facility during a billing period in accordance  
16 with normal metering practices.

17 “(3) ELECTRIC ENERGY SUPPLIED EXCEEDING ELECTRIC ENERGY  
18 GENERATED.—If the quantity of electric energy sold by the electric utility to an on-site  
19 generating facility exceeds the quantity of electric energy supplied by the on-site  
20 generating facility to the electric utility during the billing period, the electric utility may  
21 bill the owner or operator for the net quantity of electric energy sold, in accordance with  
22 normal metering practices.

23 “(4) ELECTRIC ENERGY GENERATED EXCEEDING ELECTRIC ENERGY  
24 SUPPLIED.—If the quantity of electric energy supplied by the on-site generating facility  
25 to the electric utility exceeds the quantity of electric energy sold by the electric utility to  
26 the on-site generating facility during the billing period—

27 “(A) the electric utility may bill the owner or operator of the on-site  
28 generating facility for the appropriate charges for the billing period in  
29 accordance with paragraph (2); and

30 “(B) the owner or operator of the on-site generating facility shall be  
31 credited for the excess kilowatt-hours generated during the billing period, with  
32 the kilowatt-hour credit appearing on the bill for the following billing period.

33 “(5) SAFETY AND PERFORMANCE STANDARDS.—An eligible on-site generating  
34 facility and net metering system used by an electric consumer shall meet all applicable  
35 safety, performance, reliability, and interconnection standards established by the  
36 National Electrical Code, the Institute of Electrical and Electronics Engineers, and  
37 Underwriters Laboratories.

38 “(6) ADDITIONAL CONTROL AND TESTING REQUIREMENTS.—The Commission,  
39 after consultation with State regulatory authorities and nonregulated electric utilities and  
40 after notice and opportunity for comment, may adopt, by rule, additional control and  
41 testing requirements for on-site generating facilities and net metering systems that the  
42 Commission determines are necessary to protect public safety and system reliability.

43 “(7) DEFINITIONS.—For purposes of this subsection—

44 “(A) The term ‘eligible on-site generating facility’ means—

45 “(i) a facility on the site of a residential electric consumer with a  
46 maximum generating capacity of 10 kilowatts or less that is fueled by

1 solar energy, wind energy, or fuel cells; or

2 “(ii) a facility on the site of a commercial electric consumer with  
3 a maximum generating capacity of 500 kilowatts or less that is fueled  
4 solely by a renewable energy resource, landfill gas, or a high efficiency  
5 system.

6 “(B) The term ‘renewable energy resource’ means solar, wind, biomass,  
7 or geothermal energy.

8 “(C) The term ‘high efficiency system’ means fuel cells or combined heat  
9 and power.

10 “(D) The term ‘net metering service’ means service to an electric  
11 consumer under which electric energy generated by that electric consumer from  
12 an eligible on-site generating facility and delivered to the local distribution  
13 facilities may be used to offset electric energy provided by the electric utility to  
14 the electric consumer during the applicable billing period.”.

15 **SEC. 1283. REAL-TIME PRICING AND TIME-OF-USE METERING STANDARDS.**

16 (a) ADOPTION OF STANDARDS.—Section 111(d) of the Public Utility Regulatory Policies  
17 Act of 1978 (16 U.S.C. 2621(d)) is amended by adding at the end the following:

18 “(12) REAL-TIME PRICING.—

19 “(A) Each electric utility shall, at the request of an electric consumer, provide  
20 electric service under a real-time rate schedule, under which the rate charged by the  
21 electric utility varies by the hour (or smaller time interval) according to changes in the  
22 electric utility’s wholesale power and transmission and distribution costs. The real-time  
23 pricing service shall enable the electric consumer to manage energy use and cost through  
24 real-time metering and communications technology.

25 “(B) For purposes of implementing this paragraph, any reference contained in  
26 this section to the date of enactment of the Public Utility Regulatory Policies Act of  
27 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

28 “(C) Notwithstanding subsections (b) and (c) of section 112, each State  
29 regulatory authority shall consider and make a determination concerning whether it is  
30 appropriate to implement the standard set out in subparagraph (A) not later than 1 year  
31 after the date of enactment of this paragraph.

32 “(13) TIME-OF-USE METERING.—

33 “(A) Each electric utility shall, at the request of an electric consumer, provide  
34 electric service under a time-of-use rate schedule which enables the electric consumer to  
35 manage energy use and cost through time-of-use metering and technology.

36 “(B) For purposes of implementing this paragraph, any reference contained in  
37 this section to the date of enactment of the Public Utility Regulatory Policies Act of  
38 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

39 “(C) Notwithstanding subsections (b) and (c) of [section 112], each State  
40 regulatory authority shall consider and make a determination concerning whether it is  
41 appropriate to implement the standards set out in subparagraph (A) not later than 1 year  
42 after the date of enactment of this paragraph.”.

43 (b) SPECIAL RULES.—Section 115 of the Public Utility Regulatory Policies Act of 1978  
44 (16 U.S.C. 2625) is amended by adding at the end the following:

45 “(i) REAL-TIME PRICING.—In a State that permits third-party marketers to sell electric  
46 energy to retail electric consumers, the electric consumer shall be entitled to receive the same

1 real-time metering and communication service as a direct retail electric consumer of the electric  
2 utility.

3 “(j) TIME-OF-USE METERING.—In a State that permits third-party marketers to sell  
4 electric energy to retail electric consumers, the electric consumer shall be entitled to receive the  
5 same time-of-use metering and communication service as a direct retail electric consumer of the  
6 electric utility.”.

7 **SEC. 1284. ADOPTION OF ADDITIONAL STANDARDS.**

8 (a) ADOPTION OF STANDARDS.—Section 113(b) of the Public Utility Regulatory Policies  
9 Act of 1978 (16 U.S.C. 2623(b)) is amended by adding at the end the following:

10 “(6) DISTRIBUTED GENERATION.—Each electric utility shall provide distributed  
11 generation, combined heat and power, and district heating and cooling systems competitive  
12 access to the local distribution grid and competitive pricing of service, and shall use simplified  
13 standard contracts for the interconnection of generating facilities that have a power production  
14 capacity of 250 kilowatts or less.

15 “(7) DISTRIBUTION INTERCONNECTIONS.—No electric utility may refuse to interconnect  
16 a generating facility with the distribution facilities of the electric utility if the owner or operator  
17 of the generating facility complies with technical standards adopted by the State regulatory  
18 authority and agrees to pay the costs established by such State regulatory authority.

19 “(8) MINIMUM FUEL AND TECHNOLOGY DIVERSITY STANDARD.—Each electric utility  
20 shall develop a plan to minimize dependence on one fuel source and to ensure that the electric  
21 energy it sells to consumers is generated using a diverse range of fuels and technologies,  
22 including renewable technologies.

23 “(9) FOSSIL FUEL EFFICIENCY.—Each electric utility shall develop and implement a  
24 ten-year plan to increase the efficiency of its fossil fuel generation.”.

25 (b) TIME FOR ADOPTING STANDARDS.—Section 113 of the Public Utility Regulatory  
26 Policies Act of 1978 (16 U.S.C. 2623) is further amended by adding at the end the following:

27 “(d) SPECIAL RULE.—For purposes of implementing paragraphs (6), (7), (8), and (9) of  
28 subsection (b), any reference contained in this section to the date of enactment of the Public  
29 Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of  
30 enactment of this subsection.”.

31 **SEC. 1285. TECHNICAL ASSISTANCE.**

32 Section 132(c) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2642(c))  
33 is amended to read as follows:

34 “(c) TECHNICAL ASSISTANCE FOR CERTAIN RESPONSIBILITIES.—The Secretary may  
35 provide such technical assistance as determined appropriate to assist State regulatory authorities  
36 and electric utilities in carrying out their responsibilities under section 111(d)(11) and  
37 paragraphs (6), (7), (8), and (9) of section 113(b).”.

38 **Subtitle I—Consumer Protections**

39 **SEC. 1291. INFORMATION DISCLOSURE.**

40 (a) DISCLOSURE RULES.—Not later than 180 days after the date of enactment of this Act,  
41 the Federal Trade Commission shall issue rules prescribing the form, content, placement, and  
42 timing of the disclosure required under subsections (b) and (c) of this section. The rules shall  
43 be issued in accordance with section 553 of title 5, United States Code, after consultation with  
44 the Federal Energy Regulatory Commission, the Secretary of Energy, and the Administrator of  
45 the Environmental Protection Agency.

46 (b) DISCLOSURE TO ELECTRIC CONSUMERS.—In order to assist electric consumers in

1 making informed purchasing decisions, an electric utility that sells or makes an offer to sell  
2 electric energy, or solicits electric consumers to purchase electric energy, shall provide the  
3 electric consumer, in accordance with rules issued under subsection (a), a statement containing  
4 the following information:

5 (1) the nature of the service being offered, including information about  
6 interruptibility of service;

7 (2) the price of the electric energy, including a description of any variable  
8 charges;

9 (3) a description of all other charges associated with the service being offered,  
10 including access charges, exit charges, back-up service charges, stranded cost recovery  
11 charges, and customer service charges; and

12 (4) information the Federal Trade Commission determines is technologically and  
13 economically feasible to provide, is of assistance to electric consumers in making  
14 purchasing decisions, and concerns—

15 (A) the product or its price,

16 (B) the share of electric energy that is generated by each type of electric  
17 generation resource, and

18 (C) the generation emissions characteristics of the electric energy.

19 (c) DISCLOSURE TO WHOLESALE PURCHASERS.—In every sale of electric energy for  
20 resale, the seller shall provide to the purchaser the information respecting generation source and  
21 emissions characteristics required by rules issued under subsection (a).

22 (d) FEDERAL TRADE COMMISSION ENFORCEMENT.—Violation of a rule issued under this  
23 section shall be treated as a violation of a rule under section 18 of the Federal Trade  
24 Commission Act (15 U.S.C. 57a). All functions and powers of the Federal Trade Commission  
25 under the Federal Trade Commission Act are available to the Federal Trade Commission to  
26 enforce compliance with this section notwithstanding any jurisdictional limitations in the  
27 Federal Trade Commission Act.

28 (e) STATE AUTHORITY.—This section does not preclude a State regulatory authority  
29 from issuing and enforcing additional laws, regulations, or procedures regarding the practices  
30 that are the subject of this section.

#### 31 **SEC. 1292. CONSUMER PRIVACY.**

32 The Federal Trade Commission shall issue rules protecting the privacy of electric  
33 consumers from the disclosure of consumer information in connection with the sale or delivery  
34 of electric energy to a retail electric consumer. The Federal Trade Commissions shall proceed in  
35 accordance with section 553 of title 5 of the United States Code, when prescribing a rule under  
36 this section.

#### 37 **SEC. 1293. UNFAIR TRADE PRACTICES.**

38 (a) SLAMMING.—The Federal Trade Commission shall issue rules prohibiting the  
39 change of selection of an electric utility except with the informed consent of the electric  
40 consumer or if determined by the appropriate State regulatory authority to be necessary to  
41 prevent loss of service.

42 (b) CRAMMING.—The Federal Trade Commission shall issue rules prohibiting the sale  
43 of goods and services to an electric consumer unless expressly authorized by law or the electric  
44 consumer.

45 (c) RULEMAKING.—The Federal Trade Commission shall proceed in accordance with  
46 section 553 of title 5, United States Code, when prescribing a rule under this section.

1     **SEC. 1294. DEFINITIONS.**

2         For purposes of this subtitle—

3             (1) “State commission” has the meaning given that term in section 3(15) of the  
4         Federal Power Act (16 U.S.C. 796(15)),

5             (2) “electric consumer” and “electric utility” have the meanings given those  
6         terms in section 3 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C.  
7         2602), and

8             (3) “local distribution company” means any entity that owns, controls, or  
9         operates local distribution facilities.

10    **SEC. 1295. TECHNICAL AMENDMENTS.**

11         (a) Section 201(a) of the Federal Power Act ( 16 U.S.C. § 824(a)) is amended by striking  
12         “States.” and inserting “States or a Regional Energy Services Commission.”

13         (b) Section 201(b)(1) of the Federal Power Act ( 16 U.S.C. § 824(b)(1)) is amended by  
14         striking “state line.” and inserting “state line and except as provided in Part IV shall not apply  
15         to the transmission of electric energy within the borders of a Regional Energy Services  
16         Commission and to the sale of electric energy at wholesale within the borders of a Regional  
17         Energy Services Commission.”

18         (c) Section 204(f) of the Federal Power Act is amended by striking “State commission”  
19         and adding “State commission or Regional Energy Services Commission.”

20         (d) Section 211(c) of the Federal Power Act (16 U.S.C. 824j(c)) is amended by—

21             (1) striking “(2)”;

22             (2) striking “(A)” and inserting “(1)”

23             (3) striking “(B)” and inserting “(2)”;

24             (4) striking “termination of modification” and inserting “termination or  
25         modification”.

26         (e) Section 211(d)(1) of the Federal Power Act (16 U.S.C. 824j(d)) is amended by  
27         striking “electric utility” the second time it appears and inserting “transmitting utility”.

28         (f) COMPLAINTS.—Section 306 of the Federal Power Act (16 U.S.C. 825e) is amended  
29         by—

30             (1) inserting “electric utility,” after “Any person,”; and

31             (2) inserting “transmitting utility,” after “licensee” each place it appears.

32         (g) INVESTIGATIONS.—Section 307(a) of the Federal Power Act (16 U.S.C. 825f(a)) is  
33         amended by inserting “or transmitting utility” after “any person” in the first sentence.

34         (h) REVIEW OF COMMISSION ORDERS.—Section 313(a) of the Federal Power Act (16  
35         U.S.C. 825i) is amended by inserting “electric utility, State regulatory authority or Regional  
36         Energy Services Commission” after “State Commission,” in the first sentence.

37         (i) Section 315 of the Federal Power Act (16 U.S.C. 825n) is amended by striking  
38         “subsection” and inserting “section”.